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DIVISION 10-13-001. PURPOSE**10-13-001-0001. PURPOSE:**

The purpose of this Chapter is to set forth provisions for enforcing the City of Flagstaff Land Development Code. Any violation of this Code shall be subject to the enforcement remedies and penalties provided by this Chapter and by state law.

DIVISION 10-13-002. VIOLATIONS**10-13-002-0001. VIOLATIONS:**

- A. NATURE OF VIOLATION. It shall be unlawful for any owner, lessor, lessee, manager, agent, or other person having lawful possession or control over a building, structure, or parcel of land to cause, allow or

permit, facilitate, suffer, or aid or abet any violation of any provision of this Code or to fail to perform any act or duty required by this Code.

- B. EACH DAY SEPARATE VIOLATION. Each day any violation of any provision of this Code or the failure to perform any act or duty required by this Code continues shall constitute a separate offense.
- C. PRESUMPTION OF OWNERSHIP. The owner of record, as recorded in the Coconino County Recorder's Office, of the property upon which the violation of this Chapter exists shall be presumed to be a person having lawful possession or control over a structure or parcel of land. If more than one person shall be recorded as the owner of the property, said persons shall be jointly and severally presumed to be persons having lawful control over a structure or parcel of land. This presumption shall not prevent the enforcement of the provisions of this Chapter against any person specified in Subsection A of this section.
- D. RESPONSIBILITY UPON TRANSFER OF PROPERTY. The transfer of any and all property interests in any manner including but not limited to the sale, trade, lease, gift or assignment of any real property against which a citation has been issued shall not relieve the party(s) served unless the legal entity assuming an ownership interest in such property, in writing, assumes responsibility for compliance with the citation and a copy of such writing is presented to the City. (Ord. 1741, 3-17-92)

DIVISION 10-13-003. AUTHORITY FOR ENFORCEMENT

10-13-003-0001. AUTHORITY FOR ENFORCEMENT:

- A. ENFORCEMENT AUTHORITY AND RESPONSIBILITY. The Zoning Administrator is responsible for the enforcement of this Code and shall have the power to enforce the provisions of this Code. The Planning Director, and such additional persons as the Director may from time to time designate in writing, shall serve as a Zoning Administrator.
- B. ENFORCEMENT OF ORDINANCE. It shall be the duty of the Police Department to assist in the enforcement of the Ordinance. (Ord. 1741, 3-17-92)
- C. INSPECTION AUTHORITY. The Zoning Administrator is hereby authorized and directed to make inspections in the normal course of job duties; or in response to a complaint that an alleged violation of the provisions of this Code may exist; or when there is a reason to believe that a violation of this Code has been or is being committed; or to ensure by periodic or random inspection that property is being used or developed in compliance with this Code.

10-13-003-0002. INSPECTIONS:

- A. Unscreened exterior areas may be inspected at any time with or without the involvement of the owner or occupant in accordance with legal requirements governing administrative inspections of private property.

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- B. Screened exterior areas may be inspected only during the normal business hours of the City unless otherwise arranged, and only upon invitation or with the concurrence of the occupant, or owner or agent for the owner when the premises are unoccupied, or when ordered by a court pursuant to an administrative search warrant.
- C. Except in cases of alleged imminent hazard, if the occupant is not the owner of the premises to be inspected, the Zoning Administrator or designee shall provide notice in writing or by telephone to the owner or agent of the owner as to the date and time of inspection. The owner or agent may be present for the inspection if the occupant concurs. The inability to contact the owner or owner's agent, or the convenience of the owner or agent shall not require the rescheduling of the inspection.
- D. A Zoning Administrator shall have the authority to request entry to any building, structure, or premises or any part thereof during normal City business hours for the purpose of performing his or her official duty.

- E. Following the issuance of any permit pursuant to this Ordinance, the Zoning Administrator shall review until the completion of the development, all permits issued and construction undertaken, shall compare actual development with approved plans and permits for development and the approved development schedule, if any, and shall report his or her findings to the Planning Director.
- F. If at any time during the construction of the approved development the Zoning Administrator determines that development is not proceeding or has not been completed in accordance with the approved plans and permits for development, then the Zoning Administrator may obtain a stop work order.

DIVISION 10-13-004. ENFORCEMENT BY CIVIL OR CRIMINAL PROSECUTION

10-13-004-0001. ENFORCEMENT BY CIVIL OR CRIMINAL PROSECUTION:

- A. The violation of a provision of this Code may be enforced by citation for civil sanctions or by complaint for criminal penalties. (Ord. 1741, 3/17/92)
- B. A complaint alleging a criminal violation of this Code shall be administered and heard as other criminal matters in City Court. (Ord. 1741, 3/17/92)
- C. A citation alleging a civil violation shall be administered by the Civil Hearing Officer and shall be assigned to a Civil Hearing Officer for hearing and disposition. Civil citations shall not be assigned for hearing or other disposition to a City Court Division or to a City Magistrate. (Ord. 1741, 3-17-92)

10-13-004-0002. APPEARANCE BY RESPONDENT:

The respondent shall within ten (10) days of the issuance of the citation appear in person, by mail or through the respondent's attorney before the Civil Hearing Clerk and shall either admit or deny the allegations contained in the citation. If the respondent admits the allegation, the Civil Hearing Clerk shall enter judgment against the respondent, and shall impose a civil sanction according to the schedule of fines for specific offenses adopted by the Civil Hearing Officer, and not to exceed \$150.00. If the respondent denies the allegations contained in the citation, the Clerk shall set a date for hearing of the matter. The Clerk shall not accept a plea for a citation that alleges a second violation of a single offense or a violation of an abatement agreement, but shall set the citation for hearing before a civil hearing officer. (Ord. 1741, 3-17-92)

10-13-004-0003. CIVIL PENALTIES:

- A. **FIRST OFFENSE.** Upon a finding of "responsible" and after adjudication by hearing to a civil violation of this Chapter, a civil sanction of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) shall be imposed. No Hearing Officer shall suspend the imposition of the sanction unless at the

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time of sentencing the Hearing Officer accepts an abatement agreement as hereinafter provided. (Ord. 1741, 3-17-92)

- B. **SECOND AND SUBSEQUENT OFFENSES.** Citations that allege a second or subsequent offense or that allege a violation of an abatement agreement shall be set for hearing. The sanction for a second offense shall be three hundred dollars (\$300.00). In addition, the Hearing Officer shall apprise the respondent that the respondent has an obligation and responsibility to maintain the property in conformance with the Code and that a continued failure to remedy the existing violation shall subject the respondent to a civil sanction in the amount of thirty five dollars (\$35.00) per day for each day the violation continues to exist. (Ord. 1741, 3-17-92)

10-13-004-0004. CRIMINAL PENALTIES:

- A. A person who is convicted of a violation of this Ordinance is guilty of a Class 1 misdemeanor and shall be

sentenced to no more than a two thousand five hundred dollar (\$2,500.00) fine, no more than six (6) months in jail, or both, nor less than a fine of one hundred fifty dollars (\$150.00), and shall be placed on probation for not less than one (1) year. A judge shall not suspend any or all of the impositions or execution of the sentence required by this Section.

- B. Notwithstanding Subsection A of this Section, if a judge finds at the time of sentencing, and by a preponderance of the evidence, that the violation(s) the defendant was convicted of has been corrected, and that the defendant is now in compliance with the Code, the Court may:
1. Sentence the defendant to pay a fine of not less than one hundred dollars (\$100.00); and
 2. Suspend all or part of the probation.

DIVISION 10-13-005. AUTHORITY TO ISSUE A CIVIL CITATION

10-13-005-0001. AUTHORITY TO ISSUE A CIVIL CITATION:

The Zoning Administrator or an employee of the City may issue a civil citation pursuant to this division. The authority to issue a civil citation shall become effective when the written appointment of the employee has been filed with the City Clerk. (Ord. 1741, 3-17-92)

DIVISION 10-13-006. COMMENCEMENT OF CIVIL ACTION

10-13-006-0001. COMMENCEMENT OF CIVIL ACTION:

- A. A civil violation shall be commenced by issuance of a civil citation.
- B. The zoning administrator shall adopt a printed short form citation that may be issued directly to the alleged offender upon the signature of the authorized complainant. The citation may be similar in form to the complaint used for an Arizona civil traffic violation. The citations shall be serially numbered.

At a minimum the citation shall identify the respondent by name and address, specify the nature, date and location of the alleged violation, direct the respondent to appear at the Civil Hearing Office within a specified period of time and apprise the respondent that a failure to appear on or before the date stated in the citation, will result in the entry of judgment by default and that the Hearing Officer will impose a civil sanction not to exceed one hundred fifty \$150.00.

- C. Upon issuing a citation, the complainant shall present the respondent with a legible copy and shall return the signed original citation to the Civil Hearing Clerk. The complainant shall retain a copy as a permanent record of the Planning Division.

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- D. Service of the citation may be accomplished and will be deemed proper and complete by any of the following methods:
1. By having the respondent sign the citation with a promise to appear at the Civil Hearing Office within ten (10) days of the issuance of the citation.
 2. If the respondent refuses to sign the citation, by hand delivering a copy of the citation to the respondent and making note of such action.
 3. By mailing a copy of the citation to the person charged by certified or registered mail, return receipt requested, to the person's last known address. Service shall be deemed complete upon mailing.

4. In the event service cannot be accomplished as set forth above, the City may serve the respondent by any means allowed by the Arizona Rules of Civil Procedure for the Superior Court. (Ord. 1741, 3-17-92)

DIVISION 10-13-007. DEFAULT AND OTHER JUDGMENTS

10-13-007-0001. DEFAULT AND OTHER JUDGMENTS

- A. If the respondent fails to appear at the Civil Hearing Office within the time allowed by the citation, the failure to appear shall be deemed an admission of the offense, and the Civil Hearing Clerk shall enter the failure to appear upon the record, shall enter judgment against the respondent, and shall impose a civil sanction for the violation in the amount listed upon the schedule of fines for that particular offense adopted by the Civil Hearing Officer.
- B. If the respondent enters an initial plea but fails to appear for the scheduled hearing upon the citation, the Civil Hearing Officer shall enter the failure to appear upon the record, shall enter judgment against the respondent, and shall impose a civil sanction for the violation in the amount listed upon the schedule of fines for that particular offense adopted by the Hearing Officer.

The failure to appear for a hearing shall be a separate civil violation of this Code subject to sanction as other civil violations, and the Hearing Officer may direct the authorized enforcement personnel to issue a separate civil citation for each failure to appear.

- C. In any matter set for hearing, the Hearing Officer will enter a written judgment that reflects the findings in regard to the manner of service, the appearance of the respondent for hearing or the respondent's admission and payment of the penalty, the findings of fact and conclusions of law made by the Hearing Officer in the proceeding and the Hearing Officer's finding of the respondent's responsibility or innocence in regard to the violation alleged. The judgment will also reflect the imposition of a civil penalty or the entry of an abatement agreement. (Ord. 1741, 3-17-92)

DIVISION 10-13-008. BURDEN OF PROOF

10-13-008-0001. BURDEN OF PROOF:

The burden shall be upon the City to prove by a preponderance of the evidence that the respondent was responsible for the violation of the ordinance for which the citation was issued. The existence of a nonconforming use shall constitute an affirmative defense which must be pleaded and proved by the person asserting such defense. (Ord. 1741, 3-17-92)

DIVISION 10-13-009. RULES OF PROCEDURE FOR CIVIL HEARINGS

10-13-009-0001. RULES OF PROCEDURE FOR CIVIL HEARINGS:

- A. Rule 1. Applicability of Rules

Every action or proceeding alleging a civil violation of the City of Flagstaff Land Development Code shall be commenced by a civil citation and shall be governed by the rules of procedure set forth in this section.

- B. Rule 2. Sufficiency of the Citation

No civil citation shall be deemed insufficient for failure to contain a definite statement of the essential facts constituting the specific violation which the respondent is alleged to have committed if the citation contains either a general description of the violation, the statutory designation of the violation, or the number of the

city code section alleged to have been violated.

C. Rule 3. Amending the Citation

- (a) The Hearing Officer may permit a civil citation to be amended at any time before judgment if no additional or different violation is charged and if substantial rights of the respondent are not thereby prejudiced.
- (b) The citation may be amended to conform to the evidence adduced at hearing if not addition or different violation is charged thereby and if substantial rights of the respondent are not thereby prejudiced.
- (c) All amendments to a citation relate back to the date the citation was issued.

D. Rule 4. Notice of Counsel

- (a) If a respondent denies the allegations contained in the citation, the Civil Hearing Clerk shall set a hearing date and shall promptly provide the respondent written notice that the respondent's right to be represented by counsel is waived unless the respondent notifies the Hearing Officer in writing at least ten (10) days prior to the hearing date of the respondent's election to be represented by counsel. Such notice to respondent shall specify the appropriate place and manner for filing of the notice of counsel.
- (b) Absent extraordinary circumstances, failure of the respondent to timely notify the Hearing Officer of an election to be represented by counsel constitutes a waiver of the right to counsel.

E. Rule 5. Representation by the City

The City need not be represented by counsel at the hearing of a civil citation. The Respondent may or may not be represented by counsel, as the respondent may elect.

F. Rule 6. Discovery

- (a) Each party shall prepare a list of witnesses and a list of exhibits to be used at the hearing. The respondent or his/her elected counsel shall have the right to review the City list, the exhibits, and other public records relevant to the action by making a request therefore in person to the Civil Hearing Clerk during normal working hours during the ten (10) days preceding the scheduled hearing date.
- (b) The respondent or his/her elected counsel shall deliver a list of witnesses and a copy of all exhibits that the respondent intends to present at the hearing to the Civil Hearing Clerk prior to the close of business on the fifth (5th) business day preceding the scheduled hearing date.

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- (c) Failure to comply with this rule may result, at the Hearing Officer's discretion, in the granting of a recess or continuance to permit the inspection of exhibits, or in denying the admission of exhibits or the preclusion of testimony of persons not listed, except for the testimony of the complainant and the testimony of the respondent, which may be introduced without listing.
- (d) The Hearing Officer shall rule on the materiality and relevance of the proposed exhibits at the date set for hearing, and may continue the hearing on the request of a party who has improperly been refused discovery.

G. Rule 7. Continuances

- (a) The Hearing Officer may, upon motion of any party or on its own motion, continue the hearing on

a civil citation for a period not exceeding thirty (30) days, if it appears that the interests of justice so require.

- (b) Absent extraordinary circumstances, no hearing shall be continued by the Hearing Officer without notice to both parties.
- (c) The Hearing Officer shall notify both parties in writing of the new hearing date.
- (d) No hearing may be continued more than two (2) times absent a finding of extraordinary circumstances by the Hearing Officer.

H. Rule 8. Oath

All testimony shall be given under oath or affirmation of its truth.

I. Rule 9. Questioning of Witnesses

- (a) The Hearing Officer may, on its own motion, call and examine witnesses, including the respondent.
- (b) No person may be examined or cross-examined at a hearing except by the Hearing Officer, an attorney for a party, or the respondent.

J. Rule 10. Rules of Evidence

The Arizona Rules of Evidence shall not apply in a civil hearing. Any evidence offered may be admitted subject to a determination by the Hearing Officer that the offered evidence is relevant and material and has some probative value to a fact at issue. Nothing in this rule is to be construed as abrogating any statutory provision relating to privileged communications.

K. Rule 11. Witnesses

All witnesses for the City's case in chief shall be required to testify prior to the respondent being required to testify or produce any evidence. However, a witness not called to testify in the City's case in chief may be called in rebuttal to testify to an issue raised by the defense,

L. Rule 12. Order of Proceedings

The order of proceedings shall be as follows:

- (a) Testimony of City's witnesses.
- (b) Testimony of defense witnesses.

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- (c) Testimony of City's rebuttal witnesses, if any,
- (d) Testimony of defenses rebuttal witnesses, if any,
- (e) Non-party citizen testimony to the extent determined to be material and relevant by the Hearing Officer.
- (f) Argument of the parties or their counsel, if permitted by the Hearing Officer.
- (g) Ruling by the Hearing Officer. The Hearing Officer shall, at the time of the hearing or when necessary, within ten (10) days, prepare a written opinion setting forth findings of fact and of law and the Hearing Officer's conclusion in regard to the responsibility of the respondent and the

imposition of penalties.

M. Rule 13. Record

A record of the proceedings may be made by a court reporter, by videotape, audiotape, or by any other method of accurately reproducing what occurred at the proceedings which is approved by the Supreme Court.

N. Rule 14. Default by City

If no witnesses for the City, excluding the respondent, appears at the time set for hearing, the Hearing Officer shall dismiss the complaint unless the Hearing Officer, for good cause shown, continues the hearing to another date.

O. Rule 15 Subsequent Violations

A finding of responsibility and the payment of a sanction shall not relieve a respondent from the responsibility to maintain property in compliance with the Code. The failure to correct a prohibited condition will continue to subject a person in violation of the Code to further citation.

P. Rule 16. Setting Aside Default Judgment

- (a) For good cause shown, and upon terms the Hearing Officer deems just, the Hearing Officer may set aside judgment entered upon a failure to appear. A motion to set aside judgment shall be made in writing within thirty (30) days after entry of judgment.
- (b) At any time, the Hearing Officer shall set aside a judgment entered upon a failure to appear if it appears that the named respondent was not served a copy of the complaint.

Q. Rule 17. Notice of Right to Appeal

Immediately following a hearing that results in a finding of the responsibility of the respondent, the Hearing Officer shall deliver a written notice of the right to appeal to the respondent. The notice shall state that a right to appeal exists to the Superior Court under the provisions of A.R.S. Section 22-425, the applicable time limit, and the location and manner of filing the notice of appeal. (Ord. 1741, 3-17-92)

DIVISION 10-13-010. ABATEMENT AGREEMENT**10-13-010-0001. ABATEMENT AGREEMENT:**

- A. After a hearing that results in the imposition of a civil sanction, the respondent may propose to enter an agreement to abate the violation in lieu of payment of the sanction imposed. The entry of an abatement agreement shall operate to waive the respondent's right to appeal the judgment and imposition of the civil sanction.
- B. Upon the proposal of an agreement, the Hearing Officer shall permit the complainant and the respondent to negotiate the specific actions of the respondent that would be required to abate the violation, and the time that would be allowed the respondent to complete corrective action. If the parties cannot momentarily agree upon the terms of the agreement, the Hearing Officer may order the hearing continued for not more than seven (7) calendar days. If the parties cannot agree upon the terms of the abatement agreement at the original or continued hearing, the Officer shall enter that finding upon the record and shall enter the final judgment imposing the civil sanction.
- C. If the parties reach an agreement, the Hearing Officer shall review the terms of the agreement with the parties in an attempt to insure that the requirements are specific, definite, and unambiguous in regard to the specific actions to be taken by the respondent to abate the conditions giving rise to the violation. If the Hearing Officer finds that the parties have reached a meeting of the minds on the specific actions to be performed by the respondent and the specific period of time to be allowed for the actions, the Officer shall present the agreement to the parties for signature and shall verify the parties' execution of the agreement by signature thereon. The Officer shall enter the execution of the agreement upon the record of the case and enter judgment reflecting that the original citation was concluded by the entry of an abatement agreement. The Hearing Officer shall retain the original agreement, and provide the parties with carbon or machine copies of the executed agreement, and shall apprise the respondent that the civil sanction for the first offense for failing to comply with the terms of an abatement agreement shall be five hundred dollars (\$500.00). (Ord. 1741, 3-17-92)

DIVISION 10-13-011. VIOLATION OF AN ABATEMENT AGREEMENT**10-13-011-0001. VIOLATION OF AN ABATEMENT AGREEMENT:**

- A. A failure to comply with the terms of an abatement agreement within the time set for performance of the terms of the agreement is a separate civil violation of the Land Development Code.
- B. A prosecution for an alleged violation of terms of an abatement agreement may be initiated by the filing and service of a civil citation under these rules that alleges a first, second, or third violation of an abatement agreement of a certain date entered in the original case file number.
- C. The civil sanction for the first offense of failing to comply with the terms of an abatement agreement shall be five hundred dollars (\$500.00).
- D. The civil sanction for failing to comply with the terms of an abatement agreement for more than thirty (30) days following the date of a finding of responsible for a first offense shall be an additional seven hundred fifty dollars (\$750.00).
- E. The civil sanction for failing to comply with the terms of an abatement agreement for thirty (30) days following a finding of responsible for second or subsequent offenses shall be an additional one thousand dollars (\$1,000.00).
- F. Prosecution under any subsection of this section shall not bar the prosecution of a complaint or of a series of complaints for subsequent violations of the Land Development Code.

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- G. The respondent shall not have the right to proposed an abatement agreement as an alternative to the imposition of a civil sanction for a citation alleging a failure to comply with the terms of an abatement agreement.
- H. In addition to seeking the imposition of a civil sanction for a failure to comply with the terms of an abatement agreement, the City may seek to enforce the terms of the agreement in the Arizona Superior Court by filing a complaint that alleges the execution of the agreement and by praying for injunctive relief, for specific performance of the agreement, or for such other relief as the Court may find proper. (Ord. 1741, 3-17-92)

DIVISION 10-13-012. COLLECTION OF CIVIL SANCTIONS**10-13-012-0001. COLLECTION OF CIVIL SANCTIONS:**

- A. Any judgment for civil sanctions awarded pursuant to this Division may be collected as any other civil judgment. The issue of writs of execution shall comply with the procedural and substantive requirements established by Title 12 of the Arizona Revised Statutes.
- B. The clerk of the civil hearing office may also elect to refer the judgment to a private collection agency.
- C. Collected civil sanctions shall be deposited with the City's Finance Director and shall be accounted for as general revenue. The Finance Director shall audit the assessment, collection and deposit of civil sanctions at the same time and in the same manner as audits are made of other collections of the City Court. (Ord. 1741, 3-17-92)

DIVISION 10-13-013. ENFORCEMENT BY CIVIL ACTION IN SUPERIOR COURT; REMEDIES CUMULATIVE**10-13-013-0001. INJUNCTIVE AND OTHER RELIEF:**

Whenever the Director of Planning has reasonable cause to believe that any person, firm, or corporation is violating or threatening to violate this Code, the Director may, either before or after the institution of any other action or proceeding authorized by this Code, institute a civil action in the Superior Court in the name of the City of Flagstaff for injunctive or other relief to restrict the violation or threatened violation, or to obtain other appropriate relief. The institution of an action in the Superior Court shall not relieve any party to such proceedings from liability for prosecution in the City Court, nor from any civil or criminal penalty prescribed for violations of this Code. (Ord. 1741, 3-17-92)

10-13-013-0002. OTHER POWERS AND REMEDIES:

The Director of Planning shall have such other enforcement rights, powers, and remedies as are and may from time to time be provided for or permitted by Arizona law for the enforcement of zoning regulations, or for the litigation by action or appeal of controversies in regard to zoning regulation or enforcement. (Ord. 1741, 3-17-92)

10-13-013-0003. PRE-EXISTING ENFORCEMENT ACTIONS:

Nothing in this Chapter shall prohibit the continuation of previous enforcement actions undertaken pursuant to valid resolution or law. (Ord. 1741, 3-17-92)

DIVISION 10-13-014. ENFORCEMENT BY STOP WORK ORDER

10-13-014-0001. ENFORCEMENT BY STOP WORK ORDER:

The Director of Planning may issue an order to stop work on any development, excavation, building, or structure on any land on which there is an uncorrected violation of a provision of this Code or of a permit or other form of authorization issued hereunder. The Director may also order work to be stopped in the event the activity is being conducted without having obtained a required permit or approval.